

1 E. MARTIN ESTRADA
United States Attorney
2 MACK E. JENKINS
Assistant United States Attorney
3 Chief, Criminal Division
MARK A. WILLIAMS (Cal. Bar No. 239351)
4 Chief, Environmental Crimes and Consumer Protection Section
ALEXANDER P. ROBBINS (Cal. Bar No. 251845)
5 Deputy Chief, Appeals Section
MATTHEW W. O'BRIEN (Cal. Bar No. 261568)
6 Assistant United States Attorney
Environmental Crimes and Consumer Protection Section
7 BRIAN R. FAERSTEIN (Cal. Bar No. 274850)
Assistant United States Attorney
8 Public Corruption and Civil Rights Section
JUAN M. RODRIGUEZ (Cal. Bar No. 313284)
9 Assistant United States Attorney
Environmental Crimes and Consumer Protection Section
10 1300 United States Courthouse
312 North Spring Street
11 Los Angeles, California 90012
Telephone: (213) 894-3359/8644/3819/0304
12 E-mail: Mark.A.Williams@usdoj.gov
Alexander.P.Robbins@usdoj.gov
13 Matthew.O'Brien@usdoj.gov
Brian.Faerstein@usdoj.gov
14 Juan.Rodriguez@usdoj.gov

15 Attorneys for Plaintiff
UNITED STATES OF AMERICA

16 UNITED STATES DISTRICT COURT

17 FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

No. CR 22-482-GW

19 Plaintiff,

GOVERNMENT'S RESPONSE TO DEFENSE'S
SUPPLEMENTAL BRIEF (DKT. NO. 514)

20 v.

21 JERRY NEHL BOYLAN,

22 Defendant.
23

24 Plaintiff United States of America, by and through its counsel
25 of record, the United States Attorney for the Central District of
26 California and Assistant United States Attorneys Mark Williams,
27 Alexander Robbins, Matthew O'Brien, Brian Faerstein, and Juan
28 Rodriguez, hereby files this response to defendant JERRY NEHL BOYLAN's

1 Supplemental Brief Regarding Request for Restitution Schedule and
2 Providing Citation Regarding Bond Pending Appeal (the "Brief") (Dkt.
3 No. 514), filed earlier today despite the Court's statement at the
4 end of yesterday's hearing that it did not want to hear further
5 argument on these issues.

6 The government writes only to respond to the defense's citation
7 of inapposite authority and its mischaracterization of the record in
8 this case. (The government does not respond to the defense's
9 "supplemental" -- and redundant -- restitution arguments, which the
10 government has addressed in its prior briefing.)

11 In its Brief, the defense points to United States v. Du Bo, 186
12 F.3d 1177 (9th Cir. 1999), claiming that this Court's denial of the
13 defense's motion to dismiss the indictment is not subject to harmless
14 error review on appeal. (Brief at 3-4.) The defense is wrong.

15 The Ninth Circuit held in Du Bo that harmless error review does
16 not apply where "[t]he indictment on its face is deficient" because
17 of a "complete failure to charge an essential element of a crime."
18 186 F.3d at 1179-80. There, a Hobbs Act extortion indictment
19 completely failed to allege the requisite mens rea. Id. at 1179.
20 The Ninth Circuit found that harmless error was not appropriate
21 because the indictment was "terminally defective." Id. at 1181. The
22 other case the defense belatedly cites -- United States v. Qazi, 975
23 F.3d 989 (9th Cir. 2020) -- similarly involved an indictment that
24 clearly did not allege an essential element, i.e., knowledge of felon
25 status in an 18 U.S.C. § 922(g)(1) prosecution. Id. at 992.

26 That is not the case here. The indictment alleged all the
27 essential elements of 18 U.S.C. § 1115 (and much more), including
28

1 that defendant's "misconduct, gross negligence, and inattention to
2 his duties on [the *Conception*] . . . caused the deaths of the" 34
3 victims killed aboard the vessel. (Dkt. No. 1 at 2-3 (emphasis
4 added).) The indictment alleged causation on its face, "sufficiently
5 inform[ing] Defendant of the charges against him." United States v.
6 Awad, 551 F.3d 930, 935, 937 (9th Cir. 2009) ("An indictment is
7 sufficient if it contains 'the elements of the charged crime in
8 adequate detail to inform the defendant of the charge and to enable
9 him to plead double jeopardy.'" (quoting United States v. Alber, 56
10 F.3d 1106, 1111 (9th Cir. 1995))). There is no requirement that an
11 indictment spell out the specific jury instructions that will apply
12 to each element, as the "test for sufficiency of the indictment is
13 'not whether it could have been framed in a more satisfactory manner,
14 but whether it conforms to minimal constitutional standards.'" Awad,
15 551 F.3d at 935 (quoting United States v. Hinton, 222 F.3d 664, 672
16 (9th Cir. 2000)); see also Fed. R. Crim. P. 7(c)(1) ("The indictment
17 or information must be a plain, concise, and definite written
18 statement of the essential facts constituting the offense charged.").

19 In fact, in its last-minute motion to dismiss the indictment,
20 the defense recognized that "no issue with causation was apparent on
21 the face of the indictment." (Dkt. No. 261 at 2:22-23 (quotation and
22 citation omitted).) That is because the indictment sufficiently
23 alleged defendant caused the deaths aboard the *Conception*. The
24 essence of defendant's but-for cause challenge is really one targeted
25 at the Court's jury instructions at trial. Any error in the jury

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1 instruction for causation (or the Court's denial of defendant's
2 motion to dismiss) was harmless beyond a reasonable doubt.

3 Dated: July 30, 2024

Respectfully submitted,

4 E. MARTIN ESTRADA
United States Attorney

5 MACK E. JENKINS
6 Assistant United States Attorney
7 Chief, Criminal Division

8 /s/ Brian Faerstein

9 MARK A. WILLIAMS
ALEXANDER P. ROBBINS
10 MATTHEW W. O'BRIEN
BRIAN R. FAERSTEIN
11 JUAN M. RODRIGUEZ
Assistant United States Attorneys

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA
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